THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.4833 OF 2006

Dated: 10-03-2006

Between

Tathi V.P.G.V.S. Lakshmi,

W/o. K.V.P. Madhava Rao,

R/o. Eluru, West Godavari District.

...PETITIONER

AND

The Mandal Revenue Officer,

Eluru Mandal, West Godavari

District.

...RESPONDENT

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the respondent in passing eviction order dated 03.03.2006 against her without jurisdiction as illegal and arbitrary.

Learned counsel for the petitioner submits that apprehending the action of the action of the respondent in attempting to evict the petitioner from the site occupied by her in an extent of 15 sq. yards poramboke site of the municipality situated behind the shopping complex of S.C. Corporation abutting the Ashok Nagar road of Eluru Town in which the petitioner is running small Xerox shop in the name of Mytri Type Center, the petitioner filed WP.No.4347 of 2006, which was disposed of by this Court on 06.03.2006 giving liberty to the first

respondent or the municipality, as the case may be, to follow due procedure prescribed in law before the dispossessing or evicting the petitioner.

Learned counsel further submits that contrary to the said order the respondent herein issued a notice to the petitioner stating that petitioner encroached an extent of 15 sq. yards in T.S.No.660 of Eluru by erecting a small bund and the said land belongs to the Government and accordingly, the petitioner was directed to remove the shop within 24 hours from 7 AM on 09.03.2006 otherwise the Government will remove her as per the provisions of the Land Encroachment Act, 1905 (for short 'the Act'). He further submits that the order issued under guise of notice is illegal and arbitrary and against the provisions of Section 7 of the Act.

I am of the opinion that the learned counsel for the petitioner rightly contented that the impugned notice dated 09.03.2006 issued by the respondent is contrary to Section 7 of the Act as before taking proceedings under Section 5 or 6 of the Act, the respondent has to issue a show cause notice under Section 7 of the Act calling upon the petitioner to show cause as to why action shall not be initiated against her under Section 5 or 6 of the Act. Without issuing any show cause notice and without passing any order under Section 5 or 6 of the act, the petitioner cannot be evicted from the said encroachment.

Accordingly, the impugned notice is set aside and the writ petition is allowed keeping it open for the respondent to take appropriate action in accordance with law.

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V. ESWARAIAH, J

March 10, 2006

DSK